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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,827	07/17/2003	Howard C. Willauer JR.	5226A	1996

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT PAPER NUMBER

1771

DATE MAILED: 06/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/621,827

Applicant(s)

WILLAUER, HOWARD C.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-36 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 21-36 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 July 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 07/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 21, 27-29, and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 21 is indefinite for the lack of antecedent basis for the term “said first angle” in line 8 of the claim.

4. Claims 27-29 are indefinite because it is unclear if the recited degrees are descriptive of angle direction or lateral direction.

5. Claim 32 is indefinite for the use of the phrase “having a unique visual appearance.” It is unclear what is “unique” about the appearance and what said appearance is being compared to.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Applicant claims a material comprising a base web portion and a plurality of pile yarns having a lower portion of a first color and an upper portion of a second color, wherein a first

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plurality of pile yarns extend from the base web at a first position and a second plurality extend at a second position such that the first color is exposed at adjacent positions. The base web may be a knit fabric, woven fabric, nonwoven fabric, or film. The pile yarns are preferably integrally formed with the base web and/or may be made by napping, tufting, sanding, flocking, or adhesive pile application. At least some or all of the pile fibers yarns may comprise thermoplastic fibers. the first and second positions may differ in angle direction, lateral direction, or a combination thereof. The difference between the first and second positions may be at least 30 degrees, preferably at least 60 degrees, or most preferably at least 90 degrees. Said first and second plurality of pile yarns may define a durable pattern.

8. Claim 21-26 and 30-36 are rejected under 35 USC 103(b) as being anticipated by US 1,871,249 issued to Waite.

Waite teaches a tufted pile rug comprising rayon (i.e., thermoplastic) yarns tufted into a base web or primary backing of woven canvas or similar fabric (page 1, lines 3-21). When the tufted rug is dyed, the tips of the pile fibers absorb dye more quickly and acquire a deeper shade of color than the base of the pile fibers (page 1, lines 74-82). As such, when a portion of the pile of the rug is "stroked down," the lighter colored lower portions of the pile are visible and contrast with the deeper colored pile tips (page 1, lines 90-96). Thus, claims 21-26, 30, 32, and 34-36 are anticipated by the Waite disclosure.

With respect to claims 31 and 33, it is argued that when a portion of the rug is "stroked down" a pattern is inherently formed of the stroked and non-stroked portions. Additionally, it is argued that the claim recitation to a "durable pattern" is met in that said recitation is a relative term and as such cannot serve to patentably distinguish the present invention from the prior art.

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Specifically, it is argued that the “stroked down” portion is “durable” until further disturbed.

Therefore, claims 31 and 33 are also anticipated.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 27-29 are rejected under 35 USC 103(a) as being unpatentable over the cited Waite patent.

Although Waite does not explicitly teach the claimed degree difference in positions, it is argued that said difference is obvious to one skilled in the art. Specifically, one can intentionally or unintentionally during use “stroke down” the rug to various degrees including those presently claimed. Therefore, claims 27-29 are also rejected.

11. Claims 21-36 are rejected under 35 USC 103(a) as being unpatentable over US 2,563,259 issued to Miller, US 3,917,883 issued to Jepson, and/or US 6,247,215 issued to Van Alboom et al. in view of the cited Waite patent, US 2,622,307 issued to Cogovan et al., and/or US 3,999,940 issued to Freeman. In the alternative, said claims are rejected over the cited Waite, Cogovan, and/or Freeman patents in view of the cited Miller, Jepson, and/or Van Alboom patents.

Pile fabrics comprising textured or oriented surfaces (i.e., portions of pile at a first angle and portions of pile at a second angle) are well known in the art. For example, Miller teaches a method of making pile fabrics having portions of fibers displaced from a position normal to the

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plane of said fabric (Figures 9 and 9a and col. 2, line 35-col. 3, line 6). Jepson also teaches a pile fabric comprising a surface textured of portions of pile fibers with a non-perpendicular orientation and other portions having a different non-perpendicular orientation (abstract and Figure 3). Similarly, Van Alboom discloses an inventive method for making a printed multicolored pile fabric having random groups that vary in pile orientation (abstract and Figure 2). Thus, it is well known in the art to create textured or oriented pile surfaces to produce aesthetically pleasing fabrics having improved reflection of light due to the angled fibers and improved visual appearance due to the reduction in bruising or crushing of the pile.

Additionally, it is well known in the art to color pile fabrics so that the tips of said pile have a color visually distinct from the base of said pile. For example, the Waite patent is described above. Cogovan teaches a soil-resistant pile fabric comprising a coating applied to the tips of the pile that also produces a lighter color on said tips than the color of the uncoated pile base (col. 4, lines 49-65). Freeman teaches multicolored or "frosted" pile fabrics comprising an upper pile portion of one color and a lower pile portion of another color (abstract).

Thus, it would have been readily obvious to one of ordinary skill in the art to modify with the multicolored pile of Waite, Cogovan, and/or Freeman in order to further accentuate the textured surface due to the color contrast of the pile. Alternatively, it would have been readily obvious to modify the multicolored pile of Waite, Cogovan, and/or Freeman with the textured pile surfaces of Miller, Jepson, and/or Van Alboom in order to accentuate the color differences by creating exposed lower portions of pile fibers. either way, the combination of textured pile surface and multicolored pile fibers is obvious over the prior art and would produce an

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aesthetically pleasing pile fabric having a unique appearance due to both the pile orientation and the color contrast. Therefore, claims 21-36 are rejected as being obvious over the cited prior art.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
June 22, 2005